BAIL SLIP

The Appellant/Accused No.1 Viz. P.Murugan was directed to be released on bail by the order of this Court dated 30.5.2000 and made in Crl.M.P.No.2732/2000 in Crl.A.No.417/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.2.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.417 of 2000

P.Murugan ..Appellant /Accused 1.

-vs-

State by Inspector of Police
Anthiyur Police Station
Erode District .. Respondent/Complainant.

This appeal is filed under Section 374[2] of Crl.P.C. against the Judgment made in S.C.No.99 of 1999 dated 19.4.2000 on the file of the Court of II Additional Sessions Judge, Erode.

For appellant : Mr.B.Kumarasamy

For respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.99 of 1999 on the file of Court of II Additional Sessions Judge, Erode.

2. There were totally six accused charged under Sections 147,148,449,307,307r/w 149,323,302 and 302 r/w 149 IPC. Out of six accused, A1 and A2 alone were convicted . A1 was convicted under Section 304(ii) IPC to undergo five years Rigorous Imprisonment and A2 was convicted under Section 323 and sentenced to pay a fine of Rs.500/-. All the other accused have been acquitted under the various charges levelled against them under the Indian Penal Code. A1 is the appellant herein.

3. The short facts of the prosecution case as narrated in the charge sheet are as follows:

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On 10.12.1997 at about 11.oop.m., near Ammankoil Thottam, Thottakudyaampalayam, Vempathi Village, Anthiyur , the appellant along with the other co accused formed themselves into a unlawful assembly with deadly weapon like Suriknife, sticks, and stones criminally trespassed into the house of Eswari and with a motive to kill P.W.2 Palanisamy repeatedly attacked him with stick and stone and in the course of the transaction A1 stabbed Eswari with Suriknife and thus caused instantaneous death to her.

4) The case was taken on file as PRC No.6 of 1998 by the learned Judicial Magistrate, Bhavani and after furnishing copies under Section 207 Cr.P.C., the learned Magistrate has committed the case to the Court of Sessions under Section 209 Cr.P.C., since the offence is triable by the Court of Sessions. The charge under Sections 302 IPC, 148 IPC,307 IPC, 307 r/w 149 IPC were framed against the appellant/A1 when questioned the accused pleaded not guility.

5) On the side of the prosecution,P.Ws 1 to 12 were examined. Exs P1 to P21 and M.Os 1 to 21 were marked.

6) P.W.1 is the complainant since P.W.1 has failed to support the case of the prosecution , he was treated as hostile witness. He would admit only his signature in the complaint.

6a) P.W.2 is the father of the appellant/A1. He has also an injured witness. He would admit that P.W.1 is the son of the deceased Eswari and that he knows A2 to A6 also and that A1 is his son and that some four years before the date of occurrence, the husband of Eswari died and that there was a long standing enmity between the family of Eswari and his family and that there was illicit intimacy developed between him and Eswari and he was cultivating the lands of Eswari to an extent of 2 ½ acres and that A1 has complained about this to the priest of Pethanasamy temple and to initiate a compromise he invited him(P.W.2) to his house for a lunch and that he also went and took lunch . At that time, his relatives talked ill of him by complaining that he (P.W.2) is having illicit intimacy with a widow. Thereafter he left the house and began to stay in the house of Eswari and that on the date of occurrence, Mathaiyan, Manoharan, Mani came to the house of Eswari some two years five months back talked at about 11.00p.m., and criminally intimidated him and Eswari. On the next day, Wednesday at about 11.45 p.m.,, when he and Eswari were lying on two separate cots,he heard barking of dogs and so he along with P.W.1 with a torch light along with Eswari came out of the house and saw his son Murugan(A1) standing there with a suriknife on his hand. Other accused also carried stick and stones and A1 picked up quarrel with him. While, he was talking to A1,A3 beat P.W.1 with a stick on the right shoulder,A2 beat P.W.1 on the left side of the head , accused Manoharan had thrown a stone on the chest of Eswari and when this was questioned by him(P.W.2) A2 and A3 repeatedly beat him with stick thereby causing injury on the right hip, left shoulder and on the eye brow. At the instigation

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of A2, A1 stabbed on the neck of Eswari with knife and the other accused beat him with stick and that he raised alarm . By that time, the accused ranaway. Thereafter, P.W.1 brought a car along with one Arappan and Ramasamy and Eswari was found dead on the place of occurrence itself and he was taken to a private hospital at Anthiyur at about 2.30a.m., on the following date and he was treated at the private hospital and afterwards P.W.2 went to Anthiyur Police Station and prepared a complaint and Anthiyur police sent him (P.W.2)to Government Hospital for treatment. Since Eswari's dead body was kept in the Anthiyur Government Hospital, he was taken to Erode Government Hospital. He has identified M.O.3 is the knife used by A1 for committing murder of Eswari and M.O.1 is the lungi worn by him at the time of occurrence and M.O.2 is the towel used by him at the time of occurrence. He has identified M.O.4 to M.O.10.

6b) P.W.3 in his evidence would depose that as per the request made by P.W.1, he along with Ramasamy Gounder went with P.W.1 to Anthiyur Police Station where P.W.1 gave a complaint to the Inspector of Police.

6c) P.W.4 has not supported the case of the prosecution. Hence he was treated as hostile witness. P.W.5 is a Village Administrative Officer of Nagalur Village. On information, he (P.W.5) went to the place of occurrence on 11.12.1997 where the Inspector of Police was present along with the Sub Inspector of Police and other constable and that there was a corpse lying down there and the Inspector of Police prepared an Observation Mahazar Ex P2 in his presence wherein he has signed as a witness and from the place of occurrence, M,Os.4 and 5 were recovered by the police along with M.Os6,7,8,9 and 10. M.O.11 is the blood stained earth and M.O.12 is the sample earth recovered under Mahazar by the Inspector of Police in which he and his assistant Chandrasekaran have signed as a witnesses. EX P3 is the Observation Mahazar and M.Os.1 and 2 were recovered under Ex P4 from the place of occurrence wherein also he has signed as a witness.

6d) P.W.6 is another Village Administrative Officer who would depose that on 12.12.1997 at about 7.oo a.m., while he was standing along with his men at Pudumettur bus stop, the Inspector of Police was making an enquiry of A1 who has admitted that he is the son of P.W.2 and the voluntary statement given by A1 was recorded by him and on the basis of his voluntary confession statement, knife and other wearing apparals of the accused were recovered. Ex P5 is the admissible portion of his confessioon statement. M.O.13, a slack shirt produced by A1 from the hidden place.M.O.13, M.O.14 and M.O.3 were recovered. Ex P6 is the recovery Mahazar in which he has signed as a witness.

6e)P.W.1 is the Doctor who had treated P.W.2 on 10.12.1997 at about 11.00p.m., Ex P7 is the wound certificate relating to P.W.1. He has found a cut injury on the left side of the head measuring 6 cm x ½ cm to bone deep.2) a contusion measuring 16 cm x 4 cm on the right hand 3) a contusion on the right side of his back measuring 10 cm x 3 cm and

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another contusion measuring 10 cm x 3 cm on the left side of his back. He has also examined P.W.2 for the injury, he had sustained and issued Ex P8 wound certificate.As per Ex P8 wound certificate, P.W.2 is said to have been sustained injury on the fore head which was measuring 1 cm with sutures;2) there was a contusion on the right eye lids;3) another sutured wound on the right check measuring 6 cm; 4) there was a swelling on the tip of the nose;5) Blood oozing out from his left nostril;6) contusion on the right buttocks;7) There was a contusion measuring 8 cm x 3 cm on the left leg. 8) There was a swelling all over the right check.

6f) P.W.7 has also conducted post mortem on the corpse of Eswari on 11.12.1997 at about 3.30p.m., and issued Ex P11 post mortem certificate. The deceased had sustained a sharp cut injury on the left side of the nape measuring 5 cm x ½ cm with 7 cm width.Bone deep sharp cut injury on the left check measuring ½ cm x ½ cm. The Doctor has opined that the deceased would have died due to shock and haemorrhage and due to rupture of main blood vessels. The doctor has further opined that the said injuries would have caused with a weapon like M.O.1 knife and also with a weapon like M.O.3 and that she would have died some 12 to 24 hours prior to the post mortem.

6g) P.W.8 is the then Head Clerk of the Judicial Magistrate Court, Bhavani who on receipt of the requisition Ex P12, from the Inspector of Police , Anthiyur Police Station had forwarded the material objects connected with this case with Judicial Magistrate's letter Ex P13 for chemical analysis. Ex P14 is the Anaylist report Ex P15 and Ex P16 are serologist's reports.

6h) P.W.9 is the head constable of Anthiyur Police Station who had handed over the corpse of Eswari to the Medical Officer at Government Hospital, Anthiyur for Post mortem. After the post mortem, he had recovered the wearing apparals of the deceased Eswari under M.O.15 to M.O.17 and handed the same over to the Inspector of Police with his special report Ex P17and handed over the corpse to the relatives.

6i) P.W.10 is the then Head Constable of Anthiyur Police Station who took P.W.1 Ravi on 11.12.1997 at 5.30 a.m, to the Government Hospital for treatment. P.W.11 is the Sub Inspector of Police who has recorded the complaint preferred by P.W.1 Ravi on 11.12.1997 at about 3.00 a.m., and registered a case in Cr.No.704/97 under Sections 147,148,324,307 and 302 IPC Ex P18 is the First Information Report. He has also recovered blood stained Banian M.O.18 and blood stained M.O.19 Lungi from P.W.1 Ravi and sent the same to the Judicial Magistrate's Court under Form 95.

6j) P.W.12 is the Investigation Officer in this case who would depose that on 11.12.1997 at about 4.30p.m., he received Ex P18 F.I.R in this case and immediately proceeded to the place of occurrence at 6.00 a.m and prepared Ex P2 mahazar in the presence of P.W.5 and another witness Chandrasekaran and also had drawn a rough sketch Ex P20 and has made

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arrangements to take photographs of the scence of occurrence. M.O.20 are the negatives and M.O.21(series) are the photographs(five photos), he has recovered M.O.3 to M.O.12 from the place of occurrence under Ex P3 Mahazar in the presence of witnesses. He went to the Government Hospital and conducted inquest over the corpse of the deceased Eswari in the presence of P.W.2 and another witness Arumugam between 10.00 a.m., and 1.00p.m., Ex P21 is the inquest report. He has examined the witnesses and recorded their statements. He has arrested A1/appellant on 12.12.1997 at about 7.00 a.m., near Pudumettur bus stand at Anthiyur Atthani Road. A1 voluntarily gave confession, the admissible portion of the same is Ex P5. On the basis of the confession statemenet A1, took the investigation officier along with the witnesses to a garden belonging to Rajappan at Brammdesam Village and took out M.O.3,M.O.13 and M.O.14 from the thatched coconut roof of small shed under Ex P6 mahazar in the presence of P.W.6 and another witness Appukutty. On the same date at about 11.00 a.m., he has also arrested other accused. After getting postmortem report and he gave a requisition to Ex P12 to the Judicial Magistrate to send the material objects connected with this case for chemical analysis then after completing investigation, he has filed a charge sheet on 28.1.1998.

7.When incriminating circumstances were put to the accused, he denied his complicity with the crime. The learned trial Judge, after going through the available evidence both oral and documentary, has come to a conclusion that offence under Section304 (ii) IPC has been made out beyond any reasonable doubt against A1 and an offence under Section 323 IPC has been made out against A2 and convicted A1 and sentenced to undergo five years rigorous imprisonment and convicted A2 and imposed a fine of Rs 250/- with default sentence and the learned Judge has acquitted the other accused giving benefit of doubt.

8. Now the point for consideration in this appeal is whether the conviction and sentence against the A1 under Section 304(ii) IPC is liable to be set aside for the reasons stated in the memorandum of appeal?

9. Heard Mr.B.Kumarasamy, learned counsel appearing for the appellant and Mr.V.R.Balasubramanian, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

10. The Point:
The learned counsel appearing for the appellant would contend that only on the evidence of P.W.2, the learned trial Judge has convicted the accused under Section 304(ii) IPC but the learned trial Judge has failed to consider his evidence in the cross examination to the effect that some unknown persons had made an attempt to stab him, fell on the victim Eswari who intervened in between that person and him(P.W.2) at the time of occurrence. But an important thing to be noted in this case is P.W.2 was chief examined on 3.4.2000. On that date,P.W.2 has categorically deposed in the chief examination that A1 has stabbed on the neck of Eswari but when he was recalled on 11.4.2000 and further cross examined, he would go

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away from the depositions made in the chief examination on 3.4.2000 to the effect that some unknown person had inflicted the injury. P.W.2 is an injured witness. After the occurrence, he was taken to the Government Hospital for treatment on 11.12.1997 at about 2.30p.m., where he has stated before the Doctor P.W.7 who had examined him for the injuries , he had sustained to the effect that on 10.12.1997 at about 11.00p.m., he was assaulted by known persons with stones and sticks. In the chief examination P.W.2 has identified M.O.3 as the knife used by A1 to commit murder of Eswari.

11. Admittedly, A1 is the son of P.W.2 and there was enmity between P.W.2 and A1 in respect of the illegal intimacy prevailing over Eswari and P.W.2. This motive aspect has been spoken to by P.W.2 himself in the chief examination to the effect that when he went to his house to take his lunch with his wife A1 has abused him for having illegal conduct with a widow and hence immediately left the home and began to live with Eswari, the victim in this case. So the contention of the learned counsel appearing for the appellant/A1 that the evidence of P.W.2 cannot be believed, holds no water. The evidence of P.W.1 has been corroborated by the medical evidence of P.W.7 the doctor who had conducted postmortem on the corpse of Eswari and has issued Ex P11 post mortem certificate which shows that only due to cut injury No.1 on the neck, the victim had breathed her lost. The injury was on the vital region. Even though, there was only one stab inflicted by A1 on the victim , the nature of the injury is sufficient to cause the death of the victim which attracts an offence under Section 304 (ii) IPC as correctly held by the learned trial Judge. I am of the considered view that I do not find any other reason to interfere with the well considered Judgment of the learned trial Judge in S.C.No.99 of 1999 regarding the conviction of A1 under Section 304 (ii) IPC which do not warrant any interference form this Court. Point is answered accordingly.

12. In fine, the appeal fails and the same is dismissed confirming the Judgment in S.C.No.99 of 1999 on the file of the Court of Second Additiional Sessions Judge, Erode. The trial Court is directed to secure the accused by issuing Non Bailable Warrant and to send him to prison to undergo the unexpended portion of sentence.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Judicial Magistrate, Bhavani
2. -do- through the Chief Judicial Magistratem, Erode
3. The IInd Additional Sessions Judge, Erode
4. Through the Sessions Judge, Erode
5. The Superintendent, Central Prison, Coimbatore.
6. The Public Prosecutor, Madras
7. The Inspector of Police, Anthiyur Police Station, Erode District.
8. The District Collector, Erode.
9. The Director General of Police,
Mylapore, Chennai 4.

+ 1 CC To Mr. B.Kumarasamy, Advocate SR NO. 6890

CRIMINAL APPEAL No.417 of 2000

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